

Sr. No. 218

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP No.8679 of 2011 (O&M)
Date of Decision: 11.04.2019**

Bajinder Singh

... Petitioner

Versus

Union of India and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Jagdeep Jaswal, Advocate,
for the petitioner.

Ms. Balwinder Kaur, Senior Panel Counsel
for the respondents-UOI.

ARUN MONGA, J.(ORAL)

The main ground for resisting the prayer of the petitioner taken by the respondents is a Circular order No.05/2011 dated 21.10.2011 (Annexure R-1), whereby, the Disciplinary Authority was empowered to appoint any member of the CRPF below the rank of 'Assistant Commandant' as Presenting Officer to present the case on behalf of the Disciplinary Authority before the Inquiry Officer in the departmental proceedings.

2. However, as far as the case of the petitioner is concerned, the conceded position is that no Presenting Officer was appointed, at the relevant time, when the inquiry was conducted against the petitioner.

3. Learned counsel for the petitioner places reliance on a judgment rendered by ***Supreme Court of India*** in case titled as

Union of India and others Vs. Ram Lakhan Sharma, wherein it has been clearly held that in the absence of Presenting Officer if the Inquiry Officer himself assumes the charge of presenting the case on behalf of the Disciplinary Authority, the natural legal presumption drawn in the premise would be that the Inquiry Officer loses his capacity of an independent adjudicator and the same adversely affects his adjudicating ability to adjudicate in the inquiry proceedings qua the charges imposed on a delinquent employee. The relevant extract of the judgment, *ibid* is reproduced hereinbelow:-

23. The disciplinary proceedings are quasi-judicial proceedings and Inquiry Officer is in the position of an independent adjudicator and is obliged to act fairly, impartially. The authority exercises quasi-judicial power has to act in good faith without bias, in a fair and impartial manner.

*25. A Constitution Bench of this Court has elaborately considered and explained the principles of natural justice in **A.K.Kraipak and others Vs. Union of India and others, AIR 1970 SC 150**. This Court held that the aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. The concept of natural justice has undergone a great deal of change i recent years. Initially recognized as consisting of two principles that is no one shall be a judge in his own cause and no decision shall be given against a party without affording him a reasonable hearing, various other facets have been recognized. In paragraph 20 following has been held:-*

“20. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent

miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely (1) no one shall be a judge in his own case (Nemo debet esse judex propria causa) and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably....”

4. The principle enunciated in the above judgment by the Apex Court leaves no manner of doubt that the inquiry conducted against the petitioner is vitiated on account of the Inquiry Officer himself having assumed the role of Presenting Officer and, therefore, the inquiry report and subsequent proceedings pursuant thereto do not stand judicial scrutiny and are liable to be set aside.

5. Per contra, learned counsel for the respondents submits that in case of **Union of India and others Vs. Ram Laxhan Sharma, *ibid***, the delinquent employee was still in service and the Hon'ble Supreme Court while adjudicating granted liberty to the respondents to proceed afresh and pass appropriate orders and seeks similar liberty in the present case.

6. I am afraid in the present case grant of such liberty would not be justifiable in view of the fact that by efflux of time, the

petitioner has since retired long ago and, therefore, the benefit of the illegality committed by the respondents must enure to the benefit of the employee and not to the respondents. Therefore, the prayer to grant liberty to proceed afresh against the petitioner is rejected.

7. In the premise, the writ petition is allowed. Impugned inquiry report dated 05.03.1999 (Annexure P-5) is set aside and as a necessary consequence thereof, the orders passed by the Disciplinary Authority dated 03.04.1999 (Annexure P-7) as upheld by the Appellate/Revisional Authority vide orders dated 25.06.1999 and 09.02.2011 (Annexures P-9 and P-14) respectively, are also set aside.

8. Respondents are directed to grant the consequential benefits arising out of the quashing of the impugned orders within a period of three months from the date of receipt of a certified copy of this order.

9. Petition is allowed in the aforesaid terms.

11.04.2019

vandana

**(ARUN MONGA)
JUDGE**

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No